BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTINA RAYMAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 213,649
SPEARS MANUFACTURING	)	
Respondent	)	
AND	)	
	)	
TRANSPORTATION INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a March 13, 1997, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The issue for Appeals Board review is whether respondent was provided with the seven-day notice of hearing required by K.S.A. 44-534a(a)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board has jurisdiction to review this appeal from a preliminary hearing Order entered pursuant to K.S.A. 44-534a(a)(1) because it is alleged that the Administrative Law Judge exceeded his jurisdiction in granting the relief requested at the March 12, 1997, preliminary hearing. *See* K.S.A. 44-551(b)(2)(A).

Respondent admits receiving notice of the March 12, 1997, preliminary hearing on March 4, 1997. Although counsel for claimant suspects respondent received notice from the Court earlier, that fact was not established. Whether respondent received seven days

advance notice of that hearing rests upon a determination of whether the computation of time is governed by the Workers Compensation Act or by the Code of Civil Procedure. If the computation of time is governed by the Workers Compensation Act, then respondent received the minimum notice required by K.S.A. 44-534a. However, if the Code of Civil Procedure controls, then the notice given was inadequate.

Respondent relies upon the recent Court of Appeals decision in McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996). In McIntyre, the ten days allowed under K.S.A. 44-551 for bringing an appeal to the Appeals Board from an award by an Administrative Law Judge was found to be governed by K.S.A. 60-206(a). The McIntyre case held that "K.S.A. 60-206(e) provides the method for computing time periods prescribed under any law of this state, so long as another method for computing such time is not otherwise specifically provided." McIntyre at Syl. ¶ 2. However, the Court apparently failed to take note of K.A.R. 51-17-1 which provides:

> "The time within which an act is to be done shall be computed by excluding the first day and including the last; if the last day be a Saturday or Sunday or a statutory holiday, it is to be excluded."

The McIntyre decision never mentioned K.A.R. 51-17-1. Instead, it found that neither the Workers Compensation Act nor the Director's Rules (K.A.R.) provide a method of computing the ten-day period for requesting review. It appears from a review of the briefs submitted to the Court in McIntyre that the pertinent regulation was never cited to the Court nor, as we have noted, did the Court make any reference to the regulation in its opinion. There is reason to believe that had the Court been apprised of the existence of K.A.R. 51-17-1 that a different holding would have resulted. Support for this conclusion is found in the subsequent Court of Appeals decision in Keithley v. Kansas Employment Security Board of Review, Docket No. 74,614 (Opinion filed April 4, 1997). There the Court held that the applicable administrative regulation concerning the computation of time for appeals controlled. In so holding, the Court said "by its terms, K.S.A. 60-206(a) is to be applied when the method for computing time is not otherwise specifically provided under any law of this state or any rule or regulation lawfully promulgated thereunder." Keithley at 5.

Furthermore, the Kansas Supreme Court recently reiterated the longstanding rule that the Workers Compensation Act is complete unto itself and that the Code of Civil Procedure is not applicable thereto. The Court found:

> "Kansas Appellate decisions are replete with statements that the Workers Compensation Act undertook to cover every phase of the right to compensation and of the procedure for obtaining it, which is substantial, complete, and exclusive. We must look to the procedure of the Act for the methods of its administration. Rules and methods provided by the Kansas Code of Civil Procedure not included in the Act itself are not available in

determining rights thereunder." Jones v. Continental Can Co., 260 Kan. 547, Syl. ¶ 3, 920 P.2d 939 (1996).

In this case the applicable rule is K.A.R. 51-17-1. Under the terms of this rule claimant's letter of March 3, 1997, constituted valid notice of hearing. However, the Appeals Board is bound by the doctrine of *stare decisis* to follow the rule announced in McIntyre and apply the method of computation of time contained in K.S.A. 60-206(a).

In summary, the Appeals Board finds that even though the McIntyre decision dealt with the ten-day appeal time under K.S.A. 44-551 and not with the seven-day notice requirement contained in K.S.A. 44-534a, the Appeals Board considers the McIntyre decision controlling because the Court therein determined that K.S.A. 60-206(a) applies to the computation of time in workers compensation cases. Application of the seven-day notice requirement under K.S.A. 44-534a calls for the computation of a period of time of less than 11 days. The McIntyre decision also pertains to the computation of time where the period of time prescribed by a statute is less than 11 days. Following McIntyre, the Appeals Board finds K.S.A. 60-206(a) applies. Thus the notice of the March 12, 1997, preliminary hearing given on March 3, 1997, and received by respondent on March 4, 1997, was deficient. The preliminary hearing could not proceed on that notice. Therefore, the Administrative Law Judge's Order must be set aside.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 12, 1997, preliminary hearing was heard without adequate notice to counsel as required by statute and, consequently, the March 13, 1997, preliminary hearing Order entered by Administrative Law Judge John D. Clark is void and without effect. This case is remanded to the Administrative Law Judge with directions to reset the matter for preliminary hearing giving at least seven days' written notice to the parties of the date set for such hearing.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Philip J. Bernhart, Coffeyville, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director